IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 126 of 1999

DATE OF DECISION: 3.10.2007

The Commissioner of Income-tax, Jalandhar

…Applicant

Versus

M/s Nav Durga Exports

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Bansal, Advocate,
for the applicant-revenue.

M.M. KUMAR, J.

The Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal'), by exercising its power under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act') has referred the following questions of law, which are stated to have emerged from order dated 26.3.1999, in I.T.A. No. 1105(ASR)/1994, in respect of assessment year 1992-93:-

> "1. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in dismissing the appeal of the Revenue and upholding the order of the Ld. DCIT (Appeals) that the term 'profit' in proviso to sub-section (3) of section 80-HHC of the Income-tax Act, 1961 can be stretched to include the term 'loss' whereby

directing to allow the deduction as claimed by the assessee firm?"

"2. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was right in law in dismissing the appeal of the Revenue and upholding the order of the Ld. DCIT (A) whereby directing that the deduction u/s 80 HHC of the I.T. Act, 1961 was fully admissible as claimed by the assessee firm?"

Brief facts of the case are that the assessee in respect of assessment year 1992-93 declared its total income of Rs. 15,824/-, which was derived from exports of lady suits, garments and hosiery items etc. Total turnover of exports has been declared at Rs. 5,64,453/- and G.P. of Rs. 1,56,472/-, which included cash assistance, duty draw back and import licence premium. The assessee claimed deduction of Rs. 80,306/- under Section 80HHC of the Act. The Assessing Officer rejected the claim on the ground that under Section 80HHC of the Act claim is to be calculated on the 'profit' made out of exports but in the case of the assessee, it has incurred loss from the export of goods. It was further concluded by the Assessing Officer that if the direct and indirect cost is compared with the total turnover of imports, then there is loss on account of export of goods at Rs. 62,111/- excluding incentives of Rs. 1,58,242/- but the assessee had claimed deduction under Section 809HHC of the Act by adding 90% of the total amount of incentives of Rs. 1,58,242/-, which comes to Rs. 1,42,417/- after adjusting business loss of Rs. 62,111/-, resulting

into plus figure of Rs. 80,306/- claimed as deduction under Section 80HHC

The assessee preferred an appeal against the order of the Assessing Officer before the CIT (A). The CIT (A) allowed the appeal by observing as under:-

> "2.3. I have gone through the facts of the case as well as the submissions made by the Ld. AR for the assessee. The issue involved in this case is whether the assessee is entitled to deduction u/s 80 HHC (iii) if there is apparently business loss by excluding export incentives. The Assessing Officer has interpreted the word 'Profit' and the profit 'increased' in the strict sense of the English Grammar. But in my opinion, this kind of interpretation of the word will lead to wrong calculation. In an accountancy, we have to adopt the arithmetical and mathematical interpretation of figures. Whether if a plus figure is added to a minus figure, there will be a plus answer or a minus answer, which means there should be plus income or a negative income. Whether the negative income is termed as 'loss' and plus income is termed as 'profit', but both of them are calculated, considered and computed under the head profits and gains from Business and Profession. It was never the intention of the Legislature that only the assessee who derives purely profit from the exports excluding incentives will be entitled to deduction u/s 80 HHC (iii). If that version is accepted, then the exporters, who sells their goods at a

> very competitive rates and makes profits only with the help of the actual incentives, will have to pay income-tax. Moreover, the export field is like such that when the assessee fixes its selling price, he takes into account all the incentives which heis supposed to get from the Govt. in lieu of that export. That is why he is able to make entry in the International Field and he is able to sell his goods at a very very competitive rate in the International Market, which alternatively means that incentives are also considered who (sic?) the selling prices are fixed and it automatically becomes part of the profit. Keeping in view my these observations and the observations of the Ld. CIR (A) in the case of M/s Popular Engg. Co. Loha Mandi Road, Phagwara in the order dt. 6-12-1993, I hold that the assessee is fully entitled to deduction u/s 80 HHC. The A.O. is, therefore, directed to allow the same according to law."

On further appeal filed by the revenue, while relying upon its earlier decision in the case of M/s Popular Engg. Co. Phagwara being ITA No. 188 (ASR)/1994, the Tribunal has dismissed the appeal.

After hearing learned counsel for the revenue and perusing the record we find that the matter is no longer *res integra*. The controversy is now settled by a latest judgment of Hon'ble the Supreme Court in the case of **A.M. Moosa v. Commissioner of Income Tax, (2007) 294 ITR 1 (SC),** wherein while interpreting

provisions of Section 80HHC of the Act, their Lordships' have answered similar questions of law, as have been raised in the instant reference, in favour of the revenue and against the assessee. The observations made by Hon'ble the Supreme Court in the case of A.M. Moosa (supra) reads as under:-

> " The stand needs careful consideration. Undoubtedly, Section 80HHC has been incorporated with a view to providing incentive to export houses. Even though a liberal interpretation has to be given to such a provision, the interpretation has to be as per the wording of this section. If the wording of the section is clear, then benefits which are not available under the section cannot be conferred by ignoring or misinterpreting words in the section. In this case we are concerned with the wording of sub-section (3)(c) of section 80HHC. As noted earlier, sub-section (3)(a) deals with the case where the export is only of self-manufactured goods. Sub-section (3)(b) deals with the case where the export is only of trading goods. Thus, when the Legislature wanted to take exports from self-manufactured goods or trading goods separately, it has already so provided in sub-section (3)(a) and (3)(b). It would not be denied that the word "profit" in section 80HHC(1) and section 80HHC(3)(a) or (3)(b) means a positive profit. In other words, if there is a loss then no deduction would be available under section 80HHC(1) or

(3)(a) or (3)(b). In arriving at the figure of positive profit, both the profits and the losses will have to be considered. If the net figure is a positive profit, then the assessee will be entitled to a deduction. If the net figure is a loss then the assessee will not be entitled to a deduction. Sub-section (3)(c) deals with cases where the export is of both self-manufactured goods as well as trading goods. The opening part of sub-section (3)(c) states "profits derived from such export shall". Then follow sub-clauses (i) and (ii). Between sub-clauses (i) and (ii) the word "and" appears. A plain reading of sub-section (3)(c) shows that "profits from such exports" has to be profits from exports of self-manufactured goods plus profits from exports of trading goods. The profit is to be calculated in the manner laid down in sub-section (3)(c)(i) and (ii). The opening words "profit derived from such exports" together with the word "and" clearly indicate that the profits have to be calculated by counting both the exports. It is clear from a reading of sub-sections (1) and (3) of section 80HHC that a deduction can be permitted only if there is a positive profit in the exports of both self-manufactured goods as well as trading goods. If there is a loss in either of the two then that loss has to be taken into account for the purposes of computing profits. (emphasis added)

The contrary view canvassed on behalf of the assessee was rejected by their Lordships by noticing the argument and replying the same as under:-

> " It was submitted that the word "profit" in section 80HHC must have the same meaning in the entire section, and that as the word "profit" in section 80HHC (1) means only positive profit, it will have the same meaning in section 80HHC(3)(c). it is submitted that thus the word "profit" in section 80HHC(3)(c) would not include losses and if there are any losses, they are to be ignored. The plea is clearly without substance. Firstly, it is not necessary that the word "profit" must have the same meaning. The meaning of the word "profit" will depend on the context in which it is used. In section 80HHC(1) it is admittedly used to indicate positive "profit" because the deduction will only be of a positive profit. Section 80HHC(3) is the sub-section which provides how profits are to be worked out in computing total income. For purposes of such computation both profits and losses have to be taken into account. Thus, the word "profit" in section 80HHC(3) will mean profits after taking into account losses, if any. More importantly, in our view, the term "profit" in section 80HHC both in sub-section (1) and in sub-section (3) means a positive profit worked out after taking into

consideration the losses, if any. Thus, the word "profit" has the same meaning in section 80HHC(1) and (3).

In IPCA Laboratory Ltd. v. Deputy CIT (2004) 12 SCC 742, after analysing the position in the manner done above, it was held that the profit as contemplated under section 80HHC(1) and section 80HHC(3) means positive profit. The said view was reiterated in ITO v. Induflex Products P. Ltd. (2006) 1 SCC 458. We are in respectful agreement with the view.

The above being the position, there is no merit in this appeal and is dismissed accordingly with no order as to costs."

When the questions raised in the instant reference are examined in the light of the view expressed by Hon'ble the Supreme Court no doubt is left that the questions are liable to be answered in favour of the revenue and against the assessee. Accordingly, the orders dated 26.3.1999 passed by the Tribunal is set aside with a direction to decide the issue keeping in view the above mentioned law.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 3, 2007
Pkapoor

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